

In the Matter of License No. 183442 and all other Seaman Documents
Issued to: JAMES E. DILLON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1197

JAMES E. DILLON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 6 August 1959, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of negligence. The single specification found proved alleges that while serving as Master on board the United States SS ALASKA BEAR under authority of the license above described, on 4 January 1958, Appellant negligently suffered his vessel to ground while standing off the port of Kunsan, Korea. Two other specifications preferred against the Appellant were found not proved by the Examiner.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and specifications.

The Investigating Officer made an opening statement, following which he offered in evidence the testimony of some twelve witnesses and twenty-one exhibits. In defense, Appellant presented the testimony of an additional thirteen witnesses and fourteen exhibits. The Appellant also testified in his own behalf.

At the conclusion of the hearing the Examiner announced his decision dismissing two specifications and finding the remaining specification and charge proved. An order was entered suspending all documents issued to Appellant for a period of two months on twelve months' probation.

FINDINGS OF FACT

On 4 January 1958 Appellant was serving as Master on board the United States SS ALASKA BEAR and acting under the authority of his License No. 183442 while the ship was standing off the port of Kunsan, Korea. The ALASKA BEAR is a C2 Victory ship which at the time was carrying about 3500 tons of cargo and drawing about 18-1/2 feet forward and 21 feet aft.

Shortly after nine thirty on the morning of 4 January 1958 the ALASKA BEAR arrived at a

position about five miles west of the entrance to Kunsan harbor. This harbor is known to be a difficult one to enter since it is formed by the Kum River which brings down large quantities of silt creating constantly shifting sand bars off the harbor entrance. It is necessary to take a pilot before entering and the ALASKA BEAR had made arrangements to do so on this occasion. While waiting for the pilot vessel, the ship steamed on various courses and speeds off the harbor entrance, generally running northeasterly for two to three miles and then turning and running toward the south. Appellant was on the bridge and in charge of the navigation of the vessel. Also on the bridge were the helmsman and the junior third mate, who was taking bearings and plotting the position of the ship.

Shortly after ten o'clock while the vessel was steaming on its southerly leg at full speed in the vicinity of the pilot station, the watch officer felt the ship vibrating as if it were getting into shoal water. He warned the Appellant of this and the ship was brought around on hard right rudder. During the turn a severe jolt was felt on the vessel as the ALASKA BEAR touched bottom momentarily. This grounding resulted in some slight damage in the engine room and more extensive bottom and internal damage in the way of number two and three holds.

After this momentary grounding, which did not diminish the speed of the ship, the Appellant increased speed to emergency full and the vessel continued in her turn to seaward. Thereafter she proceeded to an anchorage.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is based on the contention that the decision has no basis in fact and is not supported by substantial evidence. It is urged that even if the ALASKA BEAR did ground as alleged, there is nothing in the record to support the charge that such grounding was the result of negligence of the Appellant.

APPEARANCE: Sefton & Gartland of San Francisco, California, by Eugene L. Gartland,
Esquire, of Counsel

OPINION

The first question raised by the appeal is whether there is substantial evidence to support the conclusion of the Examiner that the ALASKA BEAR grounded momentarily off Kunsan, Korea on the morning of 4 January 1958. If there is, the remaining question is whether this grounding was due to negligence of the Appellant.

The evidence on the first question is of two kinds. First, there is the evidence relating to what occurred on the ship itself at the time of the grounding. Second, there is the evidence concerning the damage found on the ship when it was in drydock in 1959. The Examiner considered that the evidence of the condition of the vessel's hull as it appeared when in drydock was not by itself sufficient to prove that the ship had grounded. My reading of the record however leads me to the conclusion that evidence is entitled to more weight that the Examiner gave it. The record contains a great deal of testimony as to the actual damage. There is little conflict in this testimony except as to the condition of the paint on the bottom. The record also contains considerable opinion testimony

and theories as to whether or not the damage could have been caused by a grounding. And here the evidence is in conflict. It could be noted that of the three well-qualified witnesses who expressed a definite opinion, the two who felt that the damage was caused by a grounding had personally inspected the ship while it was in drydock. On the other hand, the witness for Appellant who testified that the damage probably could not have been caused by grounding had not had the opportunity to actually inspect the ship.

My conclusion is that the damage was probably caused by a grounding. This is based on the extent and nature of the damage, its location, and the opinions of the witnesses who inspected the ship while it was in drydock. My conclusion is also based on the evidence that since the incident in Korea the vessel had not suffered any other casualties capable of causing the damage found. Also I have considered the evidence of the weather and sea conditions at Kunsan on 4 January and have concluded that the damage to the ship was considerably more likely to have been caused by a grounding than by pounding of the ship into the sea.

As to the evidence concerning what happened aboard the ALASKA BEAR on the morning of 4 January 1958 there is considerable conflict. A great deal of it was no doubt caused by the fact that the testimony was given over a year after the event and that all the witnesses had made many trips to sea in the intervening time.

The chief witness for the government was the junior third mate who had the watch that morning. He testified that after the ship made arrival at Kunsan it was steaming in the general vicinity of the pilot station under the direction of the Appellant. The mate testified that he was taking bearings and plotting them. Just after ten o'clock while the ship was steaming on a southerly course he felt the ship start to vibrate as if it were getting into shallow water and he said something to the master to the effect of "We better get the hell out of here on a hard right". He testified that he and the master ordered hard right rudder simultaneously, and that the engine-order telegraph was put on emergency full ahead. During the turn he felt the sea hit the side of the ship and he also felt the ship bump twice on the bottom. Two of the ship's engineers testified to feeling a severe jolt at this same time which was logged in the engine room log. The second mate who was in his room also testified to feeling the jolt and rushing to the bridge. He heard the junior third mate saying something about a log entry and the Appellant replying that the sea had hit the ship. These three witnesses testified that it was their opinion that the ship had touched bottom.

The Appellant agreed that the ship had made a turn to starboard on a hard right rudder and that the engines were put on emergency full. However he testified that he was making the turn merely because he had come to the end of his southerly leg and that the engines were put on emergency full to bring the ship's head around faster after a large sea struck it. He testified that the mate did not warn him that the ship was getting in shallow water, and he did not feel and vibrations indicating that it was. He testified that the ship did not touch bottom but was instead hit by a large wave. In support of the Appellant the helmsman testified that he did not hear any conversation between the Appellant and the mate except for the giving and repeating of the full ahead order. The chief mate and two seamen also testified that they felt only a moderate shock or none at all and that

in their opinion there had been no grounding of the ship.

An analysis of the testimony of these witnesses and a study of the log books and charts submitted lead me to the conclusion that the decision of the Examiner that the vessel did ground is supported by reasonable and substantial evidence. The mate's version of the incident in Kunsan is corroborated in several small but important details by the testimony of the other witnesses. On the other hand I did not give much weight to the opinion of the chief mate and the two seamen that the ship did not ground. They testified that they felt no jar or jolt or only a moderate one. This is hard to reconcile with the chief engineer's testimony that it was severe enough to cause him to rush to the engine room upon feeling it. There is also the undeniable fact that the shock did cause damage to piping in the engine room. The mate's version is consistent with the known fact as to the vessel's movements on that morning insofar as they can be reconstructed with the aid of the charts offered in evidence. His story is also consistent with the weather conditions that existed at that time in that the wind, sea and probable tidal current all would tend to set the vessel onshore. It is also consistent with the damage in the engineering spaces and with the hull damage which was discovered later.

The remaining question raised by this appeal is whether the grounding was due to the negligence of the Appellant. The contention that it was not, was effectively answered in the Examiner's opinion. He pointed out that the Appellant was on the bridge and exercising full command of the vessel. The ship was equipped with an electric fathometer and radar. Under such circumstances, and remembering that vessels under careful navigation do not ground without cause in the ordinary course of events, the lack of any external force causing the grounding and the failure of the Master to use every reasonable means available to him to protect his ship raise a legal implication of negligence. See Appeal Nos. 672 and 878.

Like the Examiner I note the ambiguous testimony of the Appellant that while he kept the fathometer on all the time and continually watched it, he did not consider it reliable and instead relied on bearings. It is true that the fathometer should not be relied on to fix the location of the vessel. But it should be used to insure that the vessel remains in deep water. Bearings cannot be relied upon to do this in a port like Kunsan where the charts are not accurate, there are shifting sand bars, aids to navigation are few, where the charts in use contain cautions as to shoal water, and where there is a large range of tide. Failure to utilize the fathometer under such circumstances is negligence. And where, as in this case, the master has doubts as to the reliability and accuracy of the fathometer and the radar, it is negligence to operate close to shoal water. See also Appeal Nos. 672 and 878.

My conclusion that the Appellant was negligent is reinforced by the fact that he was running at full speed close to the beach when there was no necessity either for such speed or for being in that vicinity. The ship had no place to go and nothing to do but wait for the pilot boat to come out to her. Under such conditions there was no necessity to stand in close to the beach and it was negligence to do so without having reliable information as to the depth of water in which the vessel was operating. If the Appellant felt that his fathometer was unreliable he should have remained well clear of possible shoal waters. His failure to do this caused the grounding.

ORDER

The order of the Examiner dated at San Francisco, California, on 6 August 1959, is
AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 20th day of October 1960.